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20 January 1982

MEMORANDUM FOR: Director of Central Intelligence
Deputy Director of Central Intelligence

VIA: Deputy Director for Intelligence
Director of Global Issues

FROM: [redacted]
Chief, Geography Division, OGI

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SUBJECT: 21 January NSC Meeting on the Law of the Sea [redacted]

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1. Action Requested: None. This memorandum provides information on the attached revised Law of the Sea (LOS) Memorandum to the President, which will be discussed at an NSC meeting on 21 January. Hans Heymann, NIO-at-Large, and [redacted] CIA's representative on the Interdepartmental Group (IG) on LOS, are available to answer any queries. [redacted]

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2. Background: The LOS Memorandum for the President presents a basic issue for policy decision--should the United States remain in the Third United Nations Conference on LOS and seek changes in the Draft Convention consistent with our LOS interests or should it withdraw from the negotiations? The Memorandum includes the findings of a six-month interdepartmental LOS policy review and two US policy options, which were agreed upon at the 24 November Senior Interdepartmental Group meeting. More detailed analysis on the pros and cons and implementation of the options were added to the Memorandum at Secretary Haig's instructions. Most recently, in response to initial comments on the Memorandum by Messrs. Meese and Darman of the White House staff, a set of contingency strategies for future US negotiations has been prepared by the staff of Ambassador Malone, the President's Special Representative for the Law of the Sea Conference (the attached LOS Conference Strategies paper was forwarded to the NSC, but has not been included in the package for discussion at the NSC meeting on 21 January). [redacted]

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In sum, the Memorandum concludes that the non-seabeds sections of the Draft LOS Convention are acceptable and worth attaining, but that the major elements of the deep seabed mining regime are contrary to US needs and philosophy and must be renegotiated. Because of the current LOS negotiating situation in which virtually all nations, including our industrial allies, favor the finalizing of a comprehensive treaty, the IG concludes that two basic policy options are currently available to the US:

(I) To withdraw from the LOS Conference prior to the next session (March 1982) because an acceptable deep seabed regime is unattainable, and further negotiations on the existing text would reflect tacit acquiescence to the unrealistic goals of the LDCs.

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(II) To continue the negotiations with the goal of improving the deep seabeds provisions while simultaneously safeguarding the in-place non-seabed provisions, particularly those which protect US military and commercial navigational freedoms. ☐

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An initial plan for the implementation of Option II identifies a host of problems the US has with the deep seabed mining regime and offers alternative solutions. This examination is not exhaustive, but does present a broad range of sub-issues which must be used to develop negotiating strategies with our allies in preparation for the March 1982 session of the UN LOS Conference. ☐

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The add-on paper on LOS Conference Strategies, which was not included in the NSC package, but may well be discussed at that meeting, was prepared with the view that it will be impossible for the United States to achieve an acceptable treaty at the LOS Conference and that close attention must be paid to identifying and assessing contingency strategies that could be used to disassociate the United States from the treaty process. In essence, the strategies are refinements of the two broad options presented in the Memorandum (Strategies 1-3 tie in with Option I; Strategies 4-6 with Option 2), providing theme variations that could afford US negotiators added flexibility at the next session. ☐

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3. Department Positions: Since abrupt withdrawal from the Conference carries with it the fear of adverse political consequences, the risk of losing important navigational provisions, and negates our ability to improve the existing seabeds text, all the Departments, except Interior, favor Option II--continuing the negotiations. Interior thinks that Option II is too loosely worded and gives our negotiators too much leeway to drag the negotiations on and on. ☐

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4. Recommendations: The Agency has already concurred at the Senior Interdepartmental Group Meeting on 24 November that the initial IG Memorandum to the President adequately reflects the findings of the LOS policy review and the general policy choices available. We still feel these major points are broadly consistent with intelligence views on the issues. ☐

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In regard to the add-on paper which may or may not be discussed at the NSC meeting, we are in general agreement with State's analysis, with the exception of two points, both relating to State's Commentary on Strategy No. 1--withdrawal from the Conference with our allies before the next session. In Commentary 1.c. State asserts that walking away from the negotiations would leave the Soviets at the table, free to influence the Conference. Recent intelligence, however, suggests that the USSR would have to reconsider its support of the Draft Convention if the EC States and Japan were to abandon their support of the document. In Commentary 1.d. State forecasts "strongly adverse international reactions" to US withdrawal. In our view, while the initial reaction would be strongly negative, there would be little lasting impact on long term US interests. ☐

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Should you choose to indicate your preference as between Option I (withdrawal from the negotiations) and Option II (continuing to negotiate), you should bear in mind that most foreign governments participating in the negotiations covet US accession to the Treaty. Key states are willing to delay adoption of the Draft Convention until it is adjusted to meet some of the concerns of the United States. Therefore, the chances for modestly improving the deep seabed provisions seem good. The recent National Intelligence Estimate also points in the direction of continued US participation in the Conference. Among its major findings is the judgment that a successful treaty process is in the United States' interest whether or not it becomes a signatory. Continued US participation would help to prevent unraveling of the draft texts on navigation and would produce, at the minimum, limited beneficial changes in the seabed texts. Should the final Treaty, when the negotiations are completed, still not be satisfactory to the United States, the Government could still withhold signature and ratification, but the Treaty would then be a somewhat better document for safeguarding overall US oceans interests.

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Attachment:

LOS Memorandum to the President

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